

# United States District Court

## WESTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA

v.

ANTHONY RHODES

### ORDER OF DETENTION PENDING REVOCATION HEARING

Case Number: 1:04-CR-36

In accordance with the Bail Reform Act, 18 U.S.C. §3142(f), a detention hearing has been held. I conclude that the following facts require the detention of the defendant pending revocation hearing in this case.

#### Part I - Findings of Fact

(1) The defendant is charged with an offense described in 18 U.S.C. §3142(f)(1) and has been convicted of a (federal offense) (state or local offense that would have been a federal offense if a circumstance giving rise to federal jurisdiction had existed) that is

- a crime of violence as defined in 18 U.S.C. §3156(a)(4).
- an offense for which the maximum sentence is life imprisonment or death.
- an offense for which the maximum term of imprisonment of ten years or more is prescribed in \_\_\_\_\_
- a felony that was committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. §3142(f)(1)(A)-(C), or comparable state or local offenses.

(2) The offense described in finding (1) was committed while the defendant was on release pending trial for a federal, state or local offense.

(3) A period of not more than five years has elapsed since the (date of conviction) (release of the defendant from imprisonment) for the offense described in finding (1).

(4) Findings Nos. (1), (2) and (3) establish a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of (an)other person(s) and the community. I further find that the defendant has not rebutted this presumption.

#### Alternate Findings (A)

(1) There is probable cause to believe that the defendant has committed an offense

- for which a maximum term of imprisonment of ten years or more is prescribed in \_\_\_\_\_
- under 18 U.S.C. §924(c).

(2) The defendant has not rebutted the presumption established by finding 1 that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community.

#### Alternate Findings (B)

(1) There is a serious risk that the defendant will not appear.

(2) There is a serious risk that the defendant will endanger the safety of another person or the community.

Defendant has demonstrated an unwillingness to be managed by the probation department as evidenced by his repeated failures to appear for substance abuse counseling in November and December 2008 and for drug testing on 7 occasions between the end of October and the middle of January 2009. In mid-January he also tested positive for the use of crack cocaine, as well as an unprescribed drug. (continued on attachment)

#### Part II - Written Statement of Reasons for Detention

Defendant has failed to show by clear and convincing evidence that there are conditions that will assure his presence for future court proceedings due to what appears to be a substance abuse problem and an unwillingness to abide by various court-ordered reporting dates. If, as defense counsel suggests, defendant's inability to report for various drug testing is due to conflicts with his job, this is a problem he should have addressed with the probation office rather than simply skipping multiple reporting dates. The failures to report more likely reflect a fear of being caught testing positive for controlled substances.

#### Part III - Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States marshal for the purpose of an appearance in connection with a court proceeding.

Dated: February 3, 2009

/s/ Hugh W. Brenneman, Jr.

*Signature of Judicial Officer*

Hugh W. Brenneman, Jr., United States Magistrate Judge

*Name and Title of Judicial Officer*

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**Alternate Findings (B) - (continued)**

Defendant is living with and assisting his 80-year-old father and has been able to maintain employment as a manager at Cheddar's restaurant since late October.

**Part II - Written Statement of Reasons for Detention - (continued)**